

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KAREN MCDUGAL,

Plaintiff,

v.

Case No. _____

FOX NEWS NETWORK, LLC,

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Fox News Network, LLC (“Fox News”) removes this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. The grounds for removal are:

1. Plaintiff Karen McDougal commenced this action against Fox News on December 5, 2019, by filing a civil complaint in the Supreme Court of the State of New York, County of New York, captioned *Karen McDougal v. Fox News Network, LLC*, Index No. 161741/2019. Her complaint alleges a single count of slander per se. Fox News has not been served with the complaint, but has obtained a copy through other channels. A copy of this complaint is attached hereto as Exhibit 1.
2. In the complaint, McDougal alleges she “is a resident and domiciled in the State of Arizona,” Compl. ¶ 1.
3. On information and belief, McDougal is currently a citizen of Arizona.
4. Fox News is a citizen of the state of New York, not Arizona. *See* Compl. ¶ 2.

5. This Court has jurisdiction over this case, as it is between citizens of different states and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332. Although McDougal does not specify the amount in controversy, she alleges that she was falsely accused “of committing a felony under state and federal law to an audience of approximately 2.8 million people without justification or excuse,” Compl. ¶ 43, and demands “general and punitive damages in an amount to be determined at trial but no less than the minimum jurisdictional amount for this Court,” Compl. p. 13. On information and belief, it appears to a reasonable probability that the amount in controversy based on these allegations exceeds \$75,000.

6. Removal of this action is proper under 28 U.S.C. § 1441. Although that statute bars removal of a case based on diversity of citizenship if a defendant “is a citizen of the State in which such action is brought,” that bar applies only when such a forum-state defendant has been “properly joined *and served*.” *See* 28 U.S.C. § 1441(b)(2) (emphasis added). The Second Circuit has squarely held that this so-called “forum defendant rule” does not prevent removal of a state-court action on diversity grounds before a forum-state defendant has been served. *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 704–07 (2d Cir. 2019) (recognizing that the forum defendant rule does not prevent removal before service on the home-state defendant); *see also Encompass Ins. Co. v. Stone Mansion Restaurant, Inc.*, 902 F.3d 147, 152 (3d Cir. 2018) (same). Fox News has not yet been properly served.

7. Removal also is timely and proper under 28 U.S.C. § 1446. Specifically, § 1446(b)(1) requires a defendant to remove within 30 days of receiving service. Because Fox News has not been served, Fox News’s removal to this Court is timely.

8. Section 1446(a) requires the attachment of all process, pleadings, and orders served upon the removing defendant in the State action. Because Fox News has not been served,

no attachments are required under Section 1446(a). Nevertheless, the State court complaint is attached as Exhibit 1.

9. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be served on the plaintiff, and a copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of New York.

10. With this removal, Fox News does not waive any defense, including but not limited to insufficient service of process. *See Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 157 n.4 (2d Cir. 1996) (“Removal does not waive any Rule 12(b) defenses.”).

THEREFORE, Fox News removes this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

FOX NEWS NETWORK, LLC

/s/ Shawn Patrick Regan

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December 2019, I caused to be served via fax, email, and U.S. Mail the foregoing on the individuals listed below:

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